

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

DANIEL JOSE GOMEZ,

Petitioner,

vs.

MICHAEL MATTSON; JERRY MILLER,
UNION COUNTY STATES ATTORNEYS
OFFICE; ATTORNEY GENERAL FOR THE
STATE OF SOUTH DAKOTA,

Respondents.

4:21-CV-04177-RAL

ORDER GRANTING PLAINTIFF'S
MOTION TO APPEAL WITHOUT
PREPAYMENT OF FEES

Petitioner, Daniel Jose Gomez, filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Doc. 1. Judgment was entered against Gomez, and he filed a notice of appeal. Docs. 8, 10. Gomez now moves to appeal without prepayment of fees and has filed his prisoner trust account report. Docs. 11, 18.

The Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions for appeal and has held that the filing-fee provisions of the PLRA do not apply to habeas corpus actions. Malave v. Hedrick, 271 F.3d 1139, 1140 (8th Cir. 2001). To determine whether a habeas petitioner qualifies for in forma pauperis status, the court need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner's appeal is taken in "good faith." 28 U.S.C. § 1915(a)(1), (3).

Gomez's prisoner trust account report indicates that he has average monthly deposits of \$123.33 and an average monthly balance of \$20.85. Doc. 18 at 1. Based on this information, the

Court finds that Gomez has insufficient funds to pay the \$505.00 appellate filing fee, and his motion to appeal without prepayment of fees, Doc. 11, is granted.

Accordingly, it is

ORDERED that Gomez's motion to appeal without prepayment of fees, Doc. 11, is granted.

DATED January 4th, 2022.

BY THE COURT:


ROBERTO A. LANGE
CHIEF JUDGE
